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ABSTRACT

State regulations allow public school districts outside of New York City to apply for Building Aid on leasing costs involving instructional facilities for grades Pre-K through 12 located off school district property. This guide explains how the districts should proceed when applying for Building Aid on leased facilities. Attached is the Regulations of the Commissioner of Education, Section 155.8: Lease Approval and Building Aid for Lease School Buildings and Facilities by Schools Districts. (GR)

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ED 428 509

INSTRUCTION GUIDE

FOR

PUBLIC SCHOOL DISTRICTS OUTSIDE OF NEW YORK CITY

Lease Approval and Building Aid

For

Leased School Buildings and Facilities

Located off School Property

(Pursuant to CR 155.8)

EF 005 227

The University of the State of New York
New York State Education Department
Office of Facilities Planning
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INTRODUCTION

Section 155.8 of the Regulations of the Commissioner of Education allows public school districts outside of New York City to apply for Building Aid on the costs associated with a lease involving instructional facilities used for students in grades Pre-K through 12 that are located off school district property. In order to be eligible for Building Aid on this type of lease, the districts must obtain prior approval of the lease itself by the State Education Department (SED) before entering into the agreement. Furthermore, any renewal of the lease must also receive prior approval by SED. In addition, capital construction projects in these leased facilities may also be eligible for Building Aid under certain circumstances.

This instruction guide is intended to explain how the districts should proceed when applying for Building Aid on leased facilities as described above.

Any questions which arise that are not answered in this guide booklet should be directed to the Office of Facilities Planning at (518) 474-3906.

APPROVAL BY THE COMMISSIONER

To apply for the Commissioner's approval to use a leased facility off school district property, the school district should send a Letter of Intent (LOI) to the Office of Facilities Planning in order to obtain a project control number and assignment of a project manager. There is an LOI form on the Internet which can be used for this purpose (address for accessing this form is http://www.nysed.gov/fmis/facplan/). The completed application (Form FP-AU, Request for Approval of Use of a Facility and required attachments) are then submitted to the project manager in the Office of Facilities Planning. If the project manager needs additional information, the district will be contacted. It is important to note that the project, including the lease, will not be approved until all requested information has been received by the project manager.

It is very important to recognize that **to be eligible for Building Aid, a lease must be approved by the Commissioner of Education prior to its execution.** Commissioner's approval of the project signifies that the lease and related documents submitted to the Office of Facilities Planning meet minimum statutory requirements relating to the actual need for the leased space, its educational adequacy, health and safety issues, and site location based upon the information and certifications provided by the district. Approval **does not** signify approval of the language or provisions of the lease document itself.

Building Aid will be apportioned based upon a maximum cost allowance calculated as the product of the State-rated capacity applicable for aid on the leased space and the monthly cost index in effect when the Commissioner approves the project. Building Aid will be paid on lease expenses only up to the maximum cost allowance. The maximum cost allowance is based on a 15-year lease. A shorter lease period will result in a pro-rated maximum cost allowance. For example, if the lease is for a five year period, then the pro-rated maximum cost allowance would be 5/15 of the 15-year cost allowance computation.

Based on the premise that the 10% Building Aid incentive, which is available for the first time during the1998-99 State fiscal year, is intended to provide an incentive to school districts to increase capacity, the lease expenses will only be eligible for the additional 10% under the following conditions:

1. The lease will have to be for a term of more than 5 years, except for leases that provide swing space in conjunction with a school construction project approved on or after July 1, 1998. (Swing space means additional space needed to house the students until the construction of an addition to an existing building or a new building can be completed.)

2. The lease must be approved by the voters, or by the board of education for an dependent city school district, on or after July 1, 1998.

3. Renewal of new leases initially approved on or after July 1, 1998 will be eligibe for the 10% incentive Building Aid, within the available cost allowance. (Note: Renewal or replacement of a lease that was initially approved prior to July 1, 1998 will not be eligible for the additional 10% Building Aid incentive.)

4. The leased property must be used by the school district for instructional purposes throughout the entire period of the lease.

(***Note**: The above conditions do not apply to lease-back arrangements by the Dormitory Authority or the New York City School Construction Authority in conjunction with construction or reconstruction projects which are aided as construction projects rather than as leases.)*

Since a lease is not eligible for Building Aid unless the lease has received prior approval by the Commissioner, and because a building or leased space may not be occupied until the Office of Facilities Planning issues a Certificate of Occupancy to the district, it is very important that the district allow as much lead time as possible for the Office of Facilities Planning to complete its review and approval process.

APPROVAL OF LEASES
for School Districts outside of New York City

The following items must be submitted to the project manager in the Office of Facilities Planning in order to obtain approval of a lease that is eligible for Building Aid:

1. **Lease: Leases are not effective until the Commissioner has approved the lease.** The district must provide two copies of the **proposed lease** which contains the following information:

   a. The complete legal names and addresses of all parties to the lease as well as the property to be leased.
   b. The specific term of the lease.
   c. The amount, frequency and due dates for lease payments, including the total of the payments, subtotaled by fiscal year, for the duration of the lease term.

   (Note: In the case of leases that cannot have a payment schedule because of future Consumer Price Index (CPI) or other variable adjustments, no aid for subsequent years will be possible until a revised payment schedule is submitted to State Aid office.

2. **Long-Range Plan:** A copy of the district's updated Long-Range Plan is required for submission pursuant to Section 155.1 of the Commissioner's Regulations. **(Please Note:** The project manager may choose to accept a Facilities Needs Assessment Summary in lieu of the actual Long-Range Plan.) In order to prove that there is a real need for the district to lease the facility, the district must submit present and projected pupil enrollments (projecting out five years from the current school year for grades Pre-K to 6, eight years for grades 7 and 8, and ten years for grades 9 through 12). The project manager will also need architectural-quality small scale drawings of each floor of all instructional buildings in the district, **including this proposed leased facility**, showing the square footage and specific use of each instructional space.

   The Long-Range Plan must also include, for all district-owned facilities, a priority listing of the need for maintenance, repair or modernization of existing facilities, indicating consideration of obsolescence and the retirement of certain facilities as well as the provision of new facilities, **including the leased facility in this project**. For each facility the evaluation criteria must include: educational adequacy; structural integrity of roof, walls, windows, etc.; mechanical integrity and efficiency of plumbing, heating, cooling and electrical systems; energy efficiency; operations and maintenance--recurring problems, obsolescence, excessive costs; conformance with Commissioner's Regulations, Section 155.3 and with Chapter C of the New York State Uniform Fire Prevention and Building Code.

3. **Form FP-AU, Request for Approval of Use of a Facility:** This form, along with all required attachments listed on the form, must be submitted in duplicate to the project manager. The documents in this submission will be used by the Office of Facilities Planning to determine whether or not the proposed facility to be leased meets all minimum applicable standards for the health, safety and comfort of occupants, is educationally adequate for the intended use, and that the location of the leased space is appropriate relative to the site of the facility.

The documents to be submitted with the Form FP-AU include a Fire Safety Report. This report must be completed and all nonconforming items corrected prior to its submission to the Office of Facilities Planning. If a capital project will be done prior to occupancy of the leased space by the district, then this Report should be submitted when the capital work has been completed.

Another document required is either a copy of the current Certificate of Occupancy issued by the local code enforcement agency **or** written certification by a licensed architect or engineer that the whole building, as well as the space to be occupied by the school district, complies with all applicable provisions of Chapter C of the New York State Uniform Fire Prevention and Building Code. (**Note:** If a capital project is to be completed in the leased space prior to use by the district, then this information must be submitted after the capital construction work has been completed.)

An architectural-quality floor plan must be submitted which indicates corridors, stairs, walls, door openings and swings, windows, and room uses. Every floor of the entire building should be included in the floor plan(s) and the spaces to be leased must be clearly designated.

An architectural-quality site plan should also be submitted which includes the total site and indicates the relative location of buildings, streets, roads, parking areas, and walks. (**Note:** The minimum typical building separation is 15 feet, but 30 feet is required when classroom windows are involved.)

Finally, the district must submit either a copy of a completed Form #5 summary of their Management Plan pursuant to AHERA, 40 CFR, Part 763.93, **or** other substantiation that there is no known or assumed asbestos containing material in the spaces to be leased.

4. **Certification by the Superintendent of Schools:** The Superintendent of Schools must certify, in writing, that the proposed facility to be lease is **located** (a) within the district, or (b) in a neighboring district which is a specified number of miles from the district's boundary. In addition, **if the district is seeking Building Aid on lease expenses**, the Superintendent will have to certify that the facility to be

leased **meets requirements for access by individuals with disabilities** to both the facilities and the programs to be offered, as defined in Section 200.2 of the Commissioner's Regulations, and that the leased space will be **used to house programs for grades Pre-K through 12.**

5. **Certification by an Attorney:** An attorney representing the Board of Education must certify, in writing, that **(a)** the Board has taken **proper procedural steps** to authorize the lease; **(b)** the initial term of the lease, not including any renewals thereof, **does not exceed the period of probable usefulness** that would be prescribed for such building or facility by Local Finance Law if it were owned by a school district (i.e., 30 years for a Class A Building, 20 years for a Class B Building, and 15 years for a Class C Building); **(c) voter approval** has been obtained where required by law for a lease longer than five years or for a renewal; **(d)** the term **"lease" does not include a lease with an option to buy**; **(e)** the lease includes a **provision that the lease shall be void** and unenforceable if entered into in violation of General Municipal Law, Section 801 or Section 410 of the Education Law; and **(f)** expenditures for the lease or other annual payments **do not include the costs of heat, electricity, water or other utilities or the costs of operation or maintenance** of the leased facility.

CAPITAL PROJECTS IN LEASED FACILITIES

The following items must be submitted for capital projects to be done in leased facilities:

1. **Explanation of the Need:** The district must provide an **explanation of the need for the capital project** in light of the district's Long-Range Plan for educational facilities. (**Note:** The Long-Range Plan should have been updated to include the need for this proposed capital project.)

2. **Certification by an Attorney:** An attorney representing the Board of Education must certify that **(a)** the lease is for a term of **at least ten years** subsequent to the general contract for such construction, reconstruction, rehabilitation or improvement, and **(b)** where required by law the **approval of the voters** of the school district which will become the lessee has been obtained.

3. **Plans and Specifications:** The formal plans and specifications for capital projects proposed to be done in a school building that is leased from another school district should be submitted to the Office of Facilities Planning in accordance with Section 155.2 of the Commissioner's Regulations, which is the identical process that is required for any other capital project proposed by a public school district. If capital construction work is to be done in a facility leased from a person, partnership or corporation other than a school district, the plans and specifications are to be submitted to the Office of Facilities Planning **only for review** of their educational adequacy and conformance to the requirements of the Commissioner's Regulations; they will then have to be **submitted to the local building authority in order to obtain a Building Permit.**

Please Note: Following the completion of a capital project, a new Certificate of Occupancy issued by the local building authority shall be submitted together with the school district's certification that the work was done in accordance with the plans and specifications that were submitted to the Office of Facilities Planning. If the work deviates from the plans and specifications that were submitted, as-built drawings shall be submitted to the Office of Facilities Planning for review. There will be no Certificate of Occupancy issued by the State Education Department for the leased space until this review has been completed and the work has been determined to be acceptable.

ATTACHMENT
Regulations of the Commissioner of Education, Section 155.8

Lease Approval and Building Aid
For
Lease School Buildings and Facilities by School Districts

155.8 Lease approval and building aid for leased school buildings and facilities by school districts.

(a) Definitions -- as used in this section:

(1) annual lease means a lease of real property, the term of which is no greater than one school year, which terminates no later than June 30th.

(2) multi-year lease means a lease of real property, the term of which is greater than one school year, which terminates no later than June 30th of any school year.

(b) Approval of lease outside of New York City. To obtain prior approval of a lease pursuant to sections 403-b (1)(c), 2503(8) and/or 2554(6) of the Education Law, the board of education of a union free, central, central high school or city school district other than the city school district of the city of New York shall submit the following to the Commissioner:

(1) the proposed lease, which shall be an annual lease, multi-year lease or an amendment or extension thereof, shall include the following information:
- (i) the complete legal names and addresses of all parties and the address of the leased property,
- (ii) the lease term, and
- (iii) the amount, frequency and due dates for lease payments, including the total of payments for the duration of the lease term;

(2) to show need, a copy of the district's updated long-range facilities plan required pursuant to section 155.1 of this Part which includes the proposed leased space as well as all other planned acquisitions, disposals and leasing of buildings for school purposes during the period of the plan; and

(3) to show that the proposed leased facility meets all applicable standards for the health, safety and comfort of the occupants, is educationally adequate and where the facility is located on its site:
- (i) a request for approval of use on the form prescribed by the Commissioner,
- (ii) concerning State Uniform Fire Prevention and Building Code conformance (9 NYCRR Parts 600-1250)
  - (a) a copy of the current certificate of occupancy issued by the local code enforcement agency; or
  - (b) certification by a licensed architect/engineer that the whole building, as well as the space being used, complies with applicable provisions of Chapter C of the Uniform Fire Prevention and Building Code (9NYCRR Parts 600-1250).

(iii) the fire safety report required by section 155.4 of this Part:
  (a) with no nonconformances; or
  (b) in the case of nonconformances, certification that correction of the nonconformances are part of a capital project submitted with the lease approval request;
(iv) a site plan; and
(v) floor plan(s); and

(4) to indicate the location of the leased facility, certification by the superintendent of schools that:
  (i) the leased school/facility is located within the district but not on district-owned property, or
  (ii) the leased school/facility is owned by and is located in a neighboring union free or central school district. The distance between the two districts in miles shall be provided by the superintendent.

(5) certification by an attorney representing the board of education that:
  (i) the board has taken proper procedural steps to authorize the lease;
  (ii) the initial term of the lease, not including any renewals thereof, does not exceed the period of probable usefulness that would be prescribed for such building or facilities by the Local Finance Law if the building or facility was owned by a school district;
  (iii) voter approval has been obtained where required by law:
    (a) for a lease longer than five years;
    (b) in the case of renewals; and
    (c) for any capital project to be undertaken in a leased building or facility;
  (iv) the lease does not include an option to buy;
  (v) the lease includes a provision that the lease shall be void and unenforceable if entered into in violation of section 801of the General Municipal Law or section 410 of the Education Law; and
  (vi) the lease payments or other annual payment under the lease does not include the costs of heat, electricity, water or other utilities or the costs of operation or maintenance of the leased facility.

(6) for a district seeking aid for lease expense pursuant to subdivision 6 of section 3602 of the Education Law, a certification by the superintendent of schools that:
  (i) the leased school or facility meets requirements for access by individuals with disabilities to both facilities and programs by complying with section 200.2 of this Part; and
  (ii) the leased space will be used to house programs for pupils in grades preK-12, who are enrolled in any prekindergarten or nursery school program offered by the school district pursuant to sections 1712, 2514 or 2555 of the Education Law or who are over five and under twenty-one years of age and who have not received a high school diploma, with minimal associated administrative and support service space.

(c) Approval of capital projects outside of New York City. To obtain prior approval of a capital project in a leased building or leased facility during the term of the lease, pursuant to sections 403-b (l)(b), 2503(8) and/or 2554(6) of the Education Law, a board of education of a union free, central, central high school, or city school district other than the city school district of the City of New York shall submit the following to the Commissioner:

(1) an explanation of the need for the capital project in light of the district's long-range facilities plan, submitted pursuant to paragraph of subdivision (b) of this section and updated to reflect the need for the proposed capital project; and

(2) certification:
- (i) that the lease is for a term of at least ten years subsequent to the general contract for such construction, reconstruction, rehabilitation or improvement, and
- (ii) that where required by law, approval of the voters of the school district which will become the lessee has been obtained.
- (iii) for capital projects proposed in a school building leased from another school district, plans and specifications in accordance with section 155.2 of this Part;

(3) for capital projects proposed in a school building leased from a person, partnership or corporation other than another school district, submit for review for educational adequacy and conformance with the requirements of this Part, plans and specifications proposed to be submitted to the local building authority for a building permit.

(d) Approval of leases in the City of New York. To obtain prior approval of a lease pursuant to section 2554(6) of the Education Law, the board of education of the city school district of the City of New York shall submit the following to the Commissioner:

(1) the proposed lease, which shall be an annual lease, multi-year lease or an amendment or extension thereof, and shall include the following information:
- (i) the complete legal names and addresses of all parties and the address of the leased property,
- (ii) the lease term, and
- (iii) the amount, frequency and due dates for lease payments, including the total of payments for the duration of the lease term;

(2) to show need, a copy of the district's current five year facilities plan, or other long-range facilities plan as applicable, that is consistent with section 155.1 of this Part, and includes the proposed lease as well as all other planned acquisitions, disposals and leasing of buildings or school purposes during the period of the plan;

(3) to show that the proposed leased facility meets all applicable standards for the health, safety and comfort of the occupants, is educationally adequate and where the facility is located on its site, submit:
- (i) a request for approval of use on the form prescribed by the Commissioner;

(ii) a copy of current certificate of occupancy issued by the local code enforcement agency;
(iii) a site plan; and
(iii) floor plan(s).

(4) certification by an attorney representing the board of education that:
(i) the board has taken proper procedural steps to authorize the lease;
(ii) the initial term of the lease, not including any renewals thereof, does not exceed the period of probable usefulness that would be prescribed for such building or facilities by the Local Finance Law if the building or facility were owned by a school district;
(iii) voter approval has been obtained where required by law:
(a) for a lease longer than five years;
(b) in the case of renewals; and
(c) for any capital project to be undertaken in a leased building or facility;
(iv) the lease does not include an option to buy;
(v) the lease includes a provision that the lease shall be void and unenforceable if entered into in violation of section 801 of the General Municipal Law or section 410 of the Education Law; and
(vi) the lease payments or other annual payment under the lease do not include the costs of heat, electricity, water or other utilities or the costs of operation or maintenance of the leased facility.

(5) for the district seeking aid for lease expense pursuant to subdivision 6 of section 3602 of the Education Law, a certification by the superintendent of schools that:
(i) the leased school or facility meets requirements for access by individuals with disabilities to both facilities and programs by complying with section 200.2 of this Part; and
(ii) leased space will be used to house programs for pupils in grades preK-12, who are enrolled in any prekindergarten or nursery school program offered by the school district pursuant to sections 1712, 2514 or 2555 of the Education Law who are over five and under twenty-one years of age and who have not received a high school diploma, with minimal associated administrative and support service space.

(e) Approval of capital projects in New York City. To obtain prior approval of a capital project in a leased building or facility during the term of the lease pursuant to sections 403-b (1)(b) and 2554(6) of the Education Law, the board of education of the City of New York shall submit the following to the commissioner:

(1) an explanation of the need for the capital project in light of the district's long-range facilities plan, submitted pursuant to paragraph (2) of subdivision (d) of this section and updated to reflect the need for the proposed capital project.

(2) provide certification:
(i) that the lease is for a term of at least ten years subsequent to the general contract for such construction, reconstruction, rehabilitation or improvement.

(3) for capital projects proposed in a school building leased from another school district, submit plans and specifications in accordance with section 155.2 of this

Part; or

(4) for capital projects proposed in a school building leased from a person, partnership or corporation other than another school district, submit for review for educational adequacy and conformance with the requirements of this Part, plans and specifications proposed to be submitted to the local building authority for a building permit.

(f) following the completion of a capital project, submitted to the Commissioner pursuant to subdivision (c) or (e) of this section, a new certificate of occupancy issued by the local building authority shall be submitted together with school district certification that the work was done in accordance with submitted plans and specifications. Where the work deviates from the submitted plans and specifications, as-built drawings shall be submitted for review.

(g) Apportionment of building aid under subdivision 6 of section 3602 of the Education Law for leases approved by the Commissioner pursuant to section 403-b, subdivision 8 of section 2503, or subdivision 6 of section 2554 of the Education Law shall be apportioned pursuant to provisions of this subdivision.

(1) any apportionment for an approved lease with a term of 15 years or more shall be based on the maximum cost allowance determined in accordance with the provisions of subdivision 6 of section 3602 of the Education Law. Such apportionment shall be paid on each annual lease payment until the total of such annual lease payments equals the maximum cost allowance. No apportionment shall be paid for annual lease payments made after the sum of such annual lease payments exceeds the maximum cost allowance.

(2) any apportionment for an approved lease with a term of less than 15 years shall be based on the product of the maximum cost allowance determined in accordance with the provisions of subdivision 6 of section 3602 of the Education Law and the quotient of the number of years in the term of the lease divided by 15. Such apportionment shall be paid on each annual lease payment until the total of such annual lease payments equals such product. No apportionment shall be paid for annual lease payments after the sum of such annual payments exceeds such product.

(3) the lease payment schedule shall be structured so that no annual payment is less than 50 percent of any prior annual payment.